

This record is a partial extract of the original cable. The full text of the original cable is not available.

151126Z Mar 01

CONFIDENTIAL PTQ2110

PAGE 01 HARARE 01026 01 OF 03 151129Z
ACTION AF-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	ACQ-00	CIAE-00	DINT-00
	DODE-00	DOTE-00	SRPP-00	DS-00	EB-00	EUR-00	FAAE-00
	FBIE-00	VC-00	H-01	TEDE-00	INR-00	IO-00	L-00
	VCE-00	AC-01	NSAE-00	OIC-02	OMB-01	OPIC-01	PA-00
	PM-00	PRS-00	ACE-00	P-00	SP-00	STR-00	TRSE-00
	USIE-00	BBG-00	R-00	PMB-00	DSCC-00	PRM-01	DRL-02
	G-00	NFAT-00	SAS-00	SWCI-00	/009W		
				-----D20CD6	151130Z	/38	

FM AMEMBASSY HARARE
TO SECSTATE WASHDC 8433
INFO NSC WASHDC
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L SECTION 01 OF 03 HARARE 001026

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JFRAZER
LONDON FOR CGURNEY
PARIS FOR BWILLIAMS
NAIROBI FOR PFLAUMER
PASS USAID FOR AFR/SD - DWELLER, AFR/SA - CPALMA,
NNEWMAN, AA/AFR - VDICKSON-HORTON

E.O. 12958: DECL: 03/15/11

TAGS: [PHUM](#) [PGOV](#) [KJUS](#) [PINR](#) [ZI](#)

SUBJECT: ZIMBABWE LEGAL COMMUNITY IS EXTREMELY CONCERNED
CONFIDENTIAL

PAGE 02 HARARE 01026 01 OF 03 151129Z
THAT MUGABE IS SUBVERTING JUDICIAL INDEPENDENCE

CLASSIFIED BY CHARGE D' AFFAIRES EARL M. IRVING FOR
REASONS 1.5 (B/D).

SUMMARY

1. (C) ON MARCH 9, ACTING PRINCIPAL DEPUTY ASSISTANT
SECRETARY (PDAS) MARK BELLAMY, CHARGE EARL IRVING, AND

SIPDIS
ECONOFF (NOTETAKER) MET WITH STERNFORD MOYO, PRESIDENT
OF THE LAW SOCIETY OF ZIMBABWE AND A MEMBER OF THE
JUDICIAL SERVICES COMMISSION, AND BEATRICE MTETWA, THE
ZIMBABWEAN LAWYER WHO IS COORDINATING THE OPPOSITION
MOVEMENT FOR DEMOCRATIC CHANGE'S (MDC) LEGAL CHALLENGES
TO LAST JUNE'S PARLIAMENTARY ELECTIONS, TO DISCUSS THE
STATE OF THE JUDICIARY IN ZIMBABWE. BELLAMY EXPRESSED
THE USG'S CONCERN THAT THE GOVERNMENT OF ZIMBABWE (GOZ)
IS SELECTIVELY APPLYING THE RULE OF LAW, AND IS
THREATENING THE INDEPENDENCE OF THE JUDICIARY. HE ADDED
THAT BECAUSE OF THE POLITICAL AND ECONOMIC CRISES
AFFECTING ZIMBABWE, AND THE GOZ'S REACTIONS TO THESE
CRISES, THE USG WAS RE-EVALUATING ITS POLICIES TOWARDS
THE GOZ. MOYO AND MTETWA AGREED THAT THE SITUATION IN
ZIMBABWE IS DETERIORATING, AND THAT PRESIDENT MUGABE IS
ACTIVELY UNDERMINING THE INDEPENDENCE OF THE JUDICIARY.
MOYO PINPOINTED THE THREAT TO THE JUDICIARY'S
INDEPENDENCE TO HAVE BEGUN IN EARNEST IN FEBRUARY 2000
AFTER A MAJORITY OF ZIMBABWEAN VOTERS REJECTED THE DRAFT
CONSTITUTION SUPPORTED BY MUGABE. WITH THE FINAL
CONFIDENTIAL

PAGE 03 HARARE 01026 01 OF 03 151129Z
AGREEMENT ON THE RESIGNATION OF THE CHIEF JUSTICE OF THE
SUPREME COURT ON MARCH 2, MOYO FEARS THAT THE CONTINUED
INDEPENDENCE OF THE JUDICIARY IS EXTREMELY PRECARIOUS.
THE LAW SOCIETY PRESIDENT INDICATED THAT THE MAJORITY OF
THE MEMBERS OF THE ZIMBABWE LEGAL PROFESSION OPPOSE
THESE DEVELOPMENTS. MOYO IS ALSO COORDINATING EFFORTS
TO DETERMINE IF THERE IS A WAY TO BLOCK MUGABE'S
APPOINTMENT OF GODFREY CHIDYAUZIKU, THE JUDGE PRESIDENT
OF THE HIGH COURT, AS THE NEXT CHIEF JUSTICE OF THE
SUPREME COURT. IN A SEPARATE MEETING WITH BELLAMY ON
MARCH 10, CHIEF JUSTICE ANTHONY GUBBAY SAID THAT HE NOW
BELIEVES MUGABE IS DETERMINED TO ELIMINATE THE
INDEPENDENCE OF THE JUDICIARY, AND THAT HE WILL NOT GIVE
UP POWER, EVEN IF HE LOSES THE NEXT PRESIDENTIAL
ELECTION. END SUMMARY.

BELLAMY EXPRESSES USG CONCERNS

14. (C) ACCORDING TO MOYO, THE GOZ ASSAULT ON THE JUDICIARY BEGAN IN EARNEST FOLLOWING THE VOTER REJECTION OF THE DRAFT CONSTITUTION IN FEBRUARY 2000. MOYO BELIEVES THAT MUGABE AND THE GOZ PANICKED FOLLOWING THIS VOTE, AND BEGAN TO SEE ENEMIES IN EVERY CORNER OF THE COUNTRY. WHEN THE GOZ-SPONSORED FARM INVASIONS BY "WAR VETS" AND SQUATTERS BEGAN IN EARNEST FOLLOWING THE "NO" VOTE ON THE CONSTITUTION, COURT RULINGS AGAINST THESE INVASIONS PUT THE JUDICIARY ON A COLLISION COURSE WITH MUGABE AND THE EXECUTIVE BRANCH OF THE GOZ. SINCE LAST FEBRUARY THERE HAVE BEEN A NUMBER OF SUPREME COURT AND HIGH COURT RULINGS THAT HAVE ORDERED THE GOZ TO EVICT THE "WAR VETS" AND SQUATTERS FROM OCCUPIED FARMS, AS WELL AS TO FOLLOW EXISTING LAW IN UNDERTAKING LAND REFORM AND RESETTLEMENT. MOYO ADDED THAT OVER THE PAST YEAR THE GOZ HAS (IN CONJUNCTION WITH THE COMMERCIAL

CONFIDENTIAL

PAGE 03 HARARE 01026 02 OF 03 151130Z
FARMERS UNION) AGREED TO TWO SUPREME CONSENT ORDERS (ONE IN MARCH 2000, THE OTHER IN NOVEMBER 2000) THAT STATED THAT THE GOZ WAS NOT FOLLOWING ITS OWN LAWS IN PURSUING THE "FAST-TRACK" RESETTLEMENT PROGRAM, AND THAT IT SHOULD BEGIN TO DO SO BY REMOVING THE OCCUPIERS. FOLLOWING THE NOVEMBER CONSENT ORDER, "WAR VETS" BEGAN TO THREATEN THE SUPREME COURT JUDGES, AND THE GOZ BEGAN A FULL-COURT PROPAGANDA CAMPAIGN THAT CLAIMED THE JUDICIARY WANTED TO BRING BACK "WHITE SETTLER" RULE AND AGAIN MAKE ZIMBABWE A COLONY OF BRITAIN. THIS CAMPAIGN RESULTED IN CHIEF JUSTICE GUBBAY REQUESTING A MEETING WITH ACTING PRESIDENT SIMON MUZENDA (MUGABE WAS OUT OF THE COUNTRY). AT THIS MEETING, GUBBAY REQUESTED THAT THE GOZ OFFER ADDITIONAL PROTECTION TO THE JUSTICES, AND IF THEY WOULD NOT, GUBBAY STATED THAT HE MIGHT HAVE TO RESIGN. MOYO OPINED THAT THE GOZ SEIZED ON THIS STATEMENT, AND FORCED GUBBAY TO TENDER HIS RESIGNATION TWO DAYS LATER.

APPOINTING A RUBBER STAMP CHIEF JUSTICE

15. (C) AFTER CONSIDERABLE WRANGLING, A FINAL AGREEMENT WAS REACHED ON MARCH 2 BETWEEN THE GOZ AND GUBBAY, WHEREBY THE LATTER WOULD GO ON LEAVE FROM THE BEGINNING OF MARCH UNTIL THE END OF JUNE. PRESIDENT MUGABE WOULD, AS A RESULT, BE FREE TO APPOINT AN ACTING CHIEF JUSTICE, BUT COULD NOT APPOINT A NEW CHIEF JUSTICE UNTIL JULY 1. MUGABE QUICKLY NOMINATED THE JUDGE PRESIDENT OF THE HIGH COURT, GODFREY CHIDYAUZIKU, AS THE ACTING CHIEF JUSTICE

CONFIDENTIAL

PAGE 04 HARARE 01026 02 OF 03 151130Z
ON MARCH 9, AND HE WAS SWORN IN ON MARCH 13. CHIDYAUZIKU HAD LONG BEEN RUMORED TO BE MUGABE'S CHOICE FOR CHIEF JUSTICE DUE TO HIS LONG HISTORY AS A LOYAL SUPPORTER OF ZANU-PF. (NOTE: CHIDYAUZIKU HEADED THE CONSTITUTIONAL COMMISSION THAT PREPARED THE DRAFT CONSTITUTION THAT WAS REJECTED IN THE FEBRUARY 2000 REFERENDUM. ZIMBABWEAN CIVIL SOCIETY GROUPS HAD PUBLICLY PROCLAIMED THAT THE CONSTITUTIONAL REFORM PROCESS HAD BEEN HIJACKED BY THE GOZ AND THE FINAL VERSION DID NOT REPRESENT THE VIEWS OF ZIMBABWEAN SOCIETY. END NOTE.) MOYO ADMITTED THAT MUGABE HAD THE CONSTITUTIONAL AUTHORITY TO APPOINT WHOMEVER HE CHOSE AS ACTING CHIEF JUSTICE. HOWEVER, HE STATED THAT THE ISSUE IS NOT CLEAR FOR THE APPOINTMENT OF A CHIEF JUSTICE. ACCORDING TO MOYO, THE JUDICIAL SERVICES COMMISSION (JSC), OF WHICH HE IS A MEMBER, HAS A KEY ROLE IN ADVISING THE PRESIDENT ON THE APPOINTMENT OF A CHIEF JUSTICE. HE MADE CLEAR THAT MEMBERS OF THE JSC WOULD LIKE TO FIND A WAY TO BLOCK CHIDYAUZIKU'S APPOINTMENT AS CHIEF JUSTICE. MOYO IS CONCERNED THAT IF CHIDYAUZIKU IS APPOINTED CHIEF JUSTICE HE WILL BE IN A POSITION TO HELP MUGABE REMOVE OTHER SUPREME COURT AND HIGH COURT JUSTICES, AND REPLACE THEM WITH JUDGES WHO WILL BE COMPLIANT WITH MUGABE AND ZANU-PF. THIS WOULD, ACCORDING TO MOYO, MARK THE END OF ANY HOPE FOR A TRULY

CONFIDENTIAL

CONFIDENTIAL PTQ2113

PAGE 01 HARARE 01026 03 OF 03 151130Z
ACTION AF-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	ACQ-00	CIAE-00	DINT-00
	DODE-00	DOTE-00	SRPP-00	DS-00	EB-00	EUR-00	FAAE-00
	FBIE-00	VC-00	H-01	TEDE-00	INR-00	IO-00	L-00
	VCE-00	AC-01	NSAE-00	OIC-02	OMB-01	OPIC-01	PA-00
	PM-00	PRS-00	ACE-00	P-00	SP-00	STR-00	TRSE-00
	USIE-00	BBG-00	R-00	PMB-00	DSCC-00	PRM-01	DRL-02
	G-00	NFAT-00	SAS-00	SWCI-00	/009W		

-----D20CEF 151130Z /38

R 151126Z MAR 01
FM AMEMBASSY HARARE

TO SECSTATE WASHDC 8435
INFO NSC WASHDC
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L SECTION 03 OF 03 HARARE 001026

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JFRAZER
LONDON FOR CGURNEY
PARIS FOR BWILLIAMS
NAIROBI FOR PFLAUMER
PASS USAID FOR AFR/SD - DWELLER, AFR/SA - CPALMA,
NNEWMAN, AA/AFR - VDICKSON-HORTON

E.O. 12958: DECL: 03/15/11
TAGS: PHUM PGOV KJUS PINR ZI
SUBJECT: ZIMBABWE LEGAL COMMUNITY IS EXTREMELY CONCERNED
CONFIDENTIAL

PAGE 02 HARARE 01026 03 OF 03 151130Z
THAT MUGABE IS SUBVERTING JUDICIAL INDEPENDENCE

DEMOCRATIC TRANSITION IN ZIMBABWE. MOYO STATED THAT
CIVIL SOCIETY GROUPS ONLY HAVE THE INDEPENDENT JUDICIARY
TO TURN TO IN TRYING TO RESTRAIN THE AUTHORITARIAN
PRACTICES OF MUGABE AND ZANU-PF.

16. (C) FOR THIS REASON, MOYO REQUESTED OUR ASSISTANCE IN
RESEARCHING HOW THE CHIEF JUSTICE OF THE U.S. SUPREME
COURT, AND THOSE IN COMMONWEALTH COUNTRIES, ARE
APPOINTED, TO INCLUDE GROUNDS UPON WHICH APPOINTMENTS
ARE DENIED (E.G. EXTREME POLITICAL VIEWS, CRIMINAL
CONDUCT, IMMORAL BEHAVIOR, ETC.)

CHIEF JUSTICE GUBBAY PESSIMISTIC

17. (C) BELLAMY AND CHARGE CALLED ON CHIEF JUSTICE GUBBAY
AT HIS HOME MARCH 10. THE SOFT-SPOKEN JUDGE RECOUNTED
HOW WAR VETERANS HAD INVADED THE SUPREME COURT AFTER ITS
DECISIONS ON THE "FAST-TRACK" PROGRAM AND THE FARM
INVASIONS. GUBBAY POINTED OUT THAT ALTHOUGH THE
DECISIONS HAD BEEN LABELED "RACIST" BY THE GOZ, THEY HAD
ACTUALLY BEEN MADE BY NON-WHITE JUDGES. GUBBAY ADDED
THAT WHITE JUDGES ARE A MINORITY OF THE MEMBERS OF BOTH
THE HIGH AND SUPREME COURTS, BUT THE GOZ DOES NOT LIKE
TO ACKNOWLEDGE THIS. GUBBAY CONFIRMED THAT VICE
PRESIDENT MUZENDA HAD REFUSED TO GUARANTEE THE SAFETY OF
JUSTICES FROM THE "WAR VETS". MINISTER OF JUSTICE
PATRICK CHINAMASA TOLD GUBBAY THAT IT WAS "NORMAL" FOR
CONFIDENTIAL

PAGE 03 HARARE 01026 03 OF 03 151130Z
"WAR VETS" TO REACT BADLY TO THE COURT'S DECISIONS, AND
THAT THE JUSTICES SHOULD HAVE EXPECTED THIS. GUBBAY
SAID HE HAD DESPAIRED AT HIS INABILITY TO REASON WITH
MUZENDA AND CHINAMASA. GUBBAY INDICATED THAT THE
ZIMBABWE LEGAL COMMUNITY DID NOT RATE HIGHLY JUDGE
PRESIDENT CHIDYAUSIKU IN TERMS OF EITHER EXPERTISE OR
IMPARTIALITY. HE ADDED THAT THE REMAINING FOUR SUPREME
COURT JUSTICES - ALL OF WHOM GUBBAY PRAISED FOR THEIR
PROFESSIONALISM AND ETHICS - WOULD ACT AS A BRAKE ON THE
NEW CHIEF JUSTICE FOR AT LEAST A WHILE. GUBBAY REVEALED
THAT THERE IS NO GOOD LEGAL WAY FOR PRESIDENT MUGABE TO
OUST THE REMAINING JUSTICES AND THAT HE WOULD MOST
LIKELY INSTEAD ATTEMPT TO PACK THE COURT WITH ZANU-PF
LOYALISTS. (NOTE: THE ZIMBABWE CONSTITUTION DOES NOT
SET A LIMIT ON THE NUMBER OF SUPREME COURT JUSTICES.
END NOTE.) THE CHIEF JUSTICE IS CONVINCED THAT MUGABE
WILL NOT RELINQUISH POWER EVEN IF HE LOSES THE NEXT
PRESIDENTIAL ELECTION. HE ADDED THAT HE IS DEEPLY
SADDENED THAT ZIMBABWE'S HIGHEST COURTS, WHICH HAD FOR
TWENTY YEARS OPERATED AS A STRONG CONSTITUTIONAL CHECK
AGAINST ABUSES OF EXECUTIVE POWER, APPEARED TO BE
NEARING AN END AS AN INDEPENDENT BRANCH OF GOVERNMENT.

COMMENT:

18. (C) WE SHARE GUBBAY'S AND MOYO'S CONCERN FOR THE
CONTINUED INDEPENDENCE OF THE ZIMBABWE JUDICIARY. THERE
IS A CONCERTED EFFORT BY MUGABE AND HIS SYCOPHANTS IN
THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE GOZ TO
CONFIDENTIAL

PAGE 04 HARARE 01026 03 OF 03 151130Z
POLITICIZE BOTH THE HIGH AND SUPREME COURTS. THIS
CAMPAIGN IS REFLECTED IN THE ZANU-PF-CONTROLLED
PARLIAMENT VOTING IN FAVOR OF A MOTION OF NO CONFIDENCE
IN THE JUDICIARY ON FEBRUARY 28. THE GOZ AGREED IN ITS
MARCH 2 SETTLEMENT WITH GUBBAY TO REFRAIN FROM ATTACKING
JUSTICES THROUGH GOZ-CONTROLLED MEDIA (WE DOUBT THAT THE

GOZ WILL HONOR THIS AGREEMENT.) FROM OUR PERSPECTIVE, THE USG CAN PROVIDE THE GREATEST ASSISTANCE TO THE SUPPORTERS OF JUDICIAL INDEPENDENCE IN ZIMBABWE BY CONTINUING TO PUBLICLY STATE, IN UNEQUIVOCAL TERMS, OUR POSITION ON THE IMPORTANCE OF JUDICIAL INDEPENDENCE FOR THE FUTURE OF DEMOCRACY IN ZIMBABWE, AND THAT EFFORTS AT DESTROYING THE INDEPENDENCE OF THE JUDICIARY WILL HAVE REPERCUSSIONS IN BILATERAL RELATIONS. WE EXPLAINED TO MOYO THAT THE APPOINTMENT PROCESS FOR A CHIEF JUSTICE OF THE US SUPREME COURT IS NOT DIRECTLY APPLICABLE TO THAT OF A CHIEF JUSTICE OF THE ZIMBABWE SUPREME COURT. WE ENCOURAGED HIM TO CONTACT THE HIGH COMMISSIONS OF OTHER COMMONWEALTH COUNTRIES IN HARARE TO PURSUE THIS LINE OF INQUIRY. END COMMENT.

19. (U) ACTING PDAS BELLAMY CLEARED THIS MESSAGE.

IRVING

CONFIDENTIAL

>